

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION**

<b>Preterm-Cleveland et al.,</b>	:	<b>Case No. 1:19-cv-00360-MRB</b>
	:	
Plaintiffs	:	<b>Judge: Michael R. Barrett</b>
	:	
vs.	:	<b><u>NOTICE TO COURT REGARDING</u></b>
	:	<b><u>DEFENSE PROVIDED BY</u></b>
	:	<b><u>COUNTY PROSECUTOR</u></b>
	:	<b><u>DEFENDANTS</u></b>
<b>David Yost, Attorney General of Ohio et. al.,</b>	:	
Defendants		

Now come the Ohio Prosecuting Attorneys for Cuyahoga County, Hamilton County, Franklin County, Richland County, Mahoning County, Montgomery County, and Lucas County, through counsel, and hereby give Notice to the Court regarding the position of these County Defendants this matter.

**1. Procedural Posture**

On May 15, 2019, Plaintiffs brought this action against David Yost, Ohio's Attorney General and the prosecutors of Cuyahoga, Hamilton, Franklin, Richland, Mahoning, Montgomery, and Lucas Counties in Ohio in their official capacities. On May 20, 2019, the Court held a scheduling conference by telephone where Plaintiffs and the Ohio Attorney General were represented by counsel. None of the Counties were served at that time or received notice in time to participate in the conference. Plaintiffs seek a declaration as to the constitutionality of newly enacted Senate Bill 23 133<sup>rd</sup> General Assembly inclusive of enactment and/or amendment to R.C. §2919.192(A), (B) and 219.195(A) that requires a medical provider who intends to perform an abortion to determine whether there is cardiac activity and, if there is cardiac activity, the law makes it a crime to "caus[e] or abet[] the termination of" the pregnancy. S.B.23 §1 amending

restraining Defendants and their successors in office from enforcing S.B.23 §1 and amended Ohio Rev. Code §§ 2919.193(A), 2919.192(B), 2913.195(A). It is noted that although Ohio has 88 counties and therefore 88 elected county prosecutors, Plaintiffs have only named seven county prosecutors as defendants in this action.

**2. The Responsibilities of Ohio Attorneys General and Ohio County Prosecutors under Ohio Law.**

Pursuant to R.C. § 309.08 the prosecuting attorney of each Ohio county shall prosecute, on behalf of the state, all complaints, suits, and controversies in which the state is a party. If a law is constitutional, the prosecuting attorney will enforce it on behalf of the state. Conversely, if a law is deemed unconstitutional, the prosecuting attorney will not prosecute violations of the unconstitutional law. It is neither the role nor the duty of the prosecuting attorney to defend the challenged constitutionality of laws proposed by the General Assembly.

Pursuant to R.C. § 109.92 the Ohio attorney general shall appear for the state in the trial and argument of all civil and criminal causes in the supreme court in which the state is directly or indirectly interested. Under the current posture of this legal challenge, it is the responsibility of the Attorney General, not county prosecutors, to defend the challenged constitutionality of laws proposed by the General Assembly. In the action before the Court, the named prosecutors' offices will rely on the office of the Attorney General to defend the constitutionality of the legislation at issue in this case.

**3. Plaintiffs' waiver of claim for attorneys' fees against the Ohio Prosecutors' Offices.**

Plaintiffs acknowledge that the defense of the Ohio statute is solely within the duty of the Ohio Attorney General. As such, Plaintiffs advise the Court that should Plaintiffs prevail in their challenge to the Ohio statute, Plaintiffs will not bring a claim for attorneys' fees against the Ohio Prosecutors' Offices specifically named in this litigation, if the Ohio Prosecutors' Offices take no action to defend the statute with Plaintiffs' understanding that the Ohio Prosecutors' Offices are taking no action to defend the constitutionality of the Act since the Ohio Attorney General alone, as

a matter of law, has the County Board defend the constitutionality of the proposed statute on behalf of its client, the Ohio General Assembly.

#### **4. Notice as substitution for Answer**

The filing of this Notice will acknowledge service of summons in this matter, but the County Prosecutors' Offices do not intend to file an Answer in this action, as it is incumbent on the Attorney General to defend the constitutionality of the enacted statute, ORC 2919.15, not the named County Prosecutors' Offices. Any such answer would serve no benefit to the litigation between the real parties, Planned Parenthood and the State of Ohio.

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 13, 2019 I electronically filed the foregoing Notice with the Clerk of Court using the CM/ECF system which will send notification of such filing to all counsel of record.

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